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Supreme Court of the United States

..... Term, ...

No. 325

PAMPANGA SUGAR MILLS,
Petitioner,

VERSUS

WENCESLAO TRINIDAD,
as Collector of Internal Revenue
of the Philippine Islands,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS AND BRIEF IN SUPPORT THEREOF

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INDEX

	Page
PETITION FOR WRIT OF CERTIORARI	1
STATEMENT OF THE CASE	2
THE FACTS	2
THE LAW	3
MAIN POINT AT ISSUE	4
GROUNDS FOR ALLOWANCE OF THE WRIT	5
BRIEF IN SUPPORT OF PETITION	9
OPINION OF THE COURT BELOW	10
THE FACTS	14
THE STATUTE	15
THE QUESTIONS OF LAW	16
ARGUMENT	17
I. *The decision of the Supreme Court of the Philippine Islands in the instant case is not conclusive upon this Honorable Court, notwithstanding the fact that it involves mainly the interpretation and application of a local statute*	17
II. *Petitioner is not a manufacturer in the sense of constituting it a merchant under the provisions of section 1459 of the Administrative Code of 1917*	18
Previous Judicial and Administrative Rulings	18
The Case at Bar	26
Petitioner does not buy its raw material and devote itself exclusively to its conversion into the finished product	26
Petitioner did not manufacture to sell, hence, it is not a merchant within the purview of Section 1459 of the Administrative Code	28
Effect of Act No. 3082 of the Philippine Legislature	31
III. *Petitioner is included within the exemptions provided in Section 1460 of the Administrative Code of 1917*	32
The Rationale of Section 1460	36
Administrative Interpretations	39
CONCLUSION	40

STATUTES CITED

Page

ACTS OF CONGRESS

February 13, 1925, Secs. 7-8 (43 Stat. at L. 930, Fed. Stat. Anno. Supp. 1925, p. 90) 9-10

ACTS OF PHILIPPINE COMMISSION

Act No. 1189, Sec. 141 ..... 36, 39
Act No. 1189, Sec. 142 ..... 36, 39

ACTS OF PHILIPPINE LEGISLATURE

Act No. 2339, Sec. 41 36
Act No. 2479, Sec. 2 ..... 37, 38
Act No. 2541 ..... 37, 38
Act No. 2711 (commonly known as the Administrative Code of 1917) Sec. 138 ..... 5, 11, 17
Act No. 2711 Sec. 1453 31
Act No. 2711 Sec. 1459 ..... 3, 15, 34
Act No. 2711 Sec. 1460 ..... 3, 16, 32
Act No. 2711 Sec. 1462 ..... 6, 20, 21
Act No. 3065 21
Act No. 3082 ..... 6, 20, 21, 31

CASES CITED

Central Azucarera de Bais vs. Wenceslao Trinidad, 46 Phil. 492 .. 13, 22
La Carlota Sugar Central vs. Wenceslao Trinidad, 43 Phil. 816 .. 18, 24
In Re I. Rheinstron & Sons Co., 207 Fed. 119, 136 26
Pierce v. Schenck, 3 Hill (N. Y.) 28 28
Ferry & Co. v. Forquer, 61 Mont. 336, 29 A. L. R. 642, 646 28

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Bureau of Internal Revenue Administrative Circular, XXI Off. Gaz. 2824 22

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WENCESLAO TRINIDAD,
as Collector of Internal Revenue
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Respondent.

To the Honorable, the Supreme Court
of the United States:

Petitioner herein, the Pampanga Sugar Mills, respectfully prays that a writ of certiorari may issue to review the judgment of the Supreme Court of the Philippine Islands rendered on February 13, 1928, in the case therein then pending entitled "Pampanga Sugar Mills, plaintiff-appellant, *versus* Wenceslao Trinidad, Collector of Internal Revenue of the Philippine Islands, defendant-appellee," being Case No. 23985 in said Court.

THE CASE

The case was originally brought in the Court of First Instance of Manila for the purpose of recovering certain Internal Revenue taxes paid under protest by petitioner during the period commencing with the third quarter of 1920 up to and including the second quarter of 1922, amounting altogether to Sixty Thousand Nine Hundred and Eleven Pesos and Forty-two Centavos (₱60,911.42), Philippine Currency.

THE FACTS

The facts involved in the case appear in a stipulation filed by the parties under date of September 14, 1924. (Record, pp. 24-29.) Briefly stated, the material facts are:

Petitioner, during all the time mentioned in the complaint, owned and operated a sugar mill at Del Carmen, Province of Pampanga, Philippine Islands. In the operation of said sugar mill, petitioner milled "sugar cane grown by sugar cane growers on lands other than those belonging to plaintiff (petitioner) and delivered to it under so-called milling contracts, *and as compensation for its services in milling said sugar cane*," petitioner received 50% of the resulting raw centrifugal sugar. During the period from July 1, 1920 to June 30, 1922, both dates inclusive, petitioner had received from the sugar cane growers,

as compensation for its services in milling their sugar cane, raw centrifugal sugar which upon being sold resulted in a total sales value of P6,091,142.00. The respondent claiming authority under the provisions of Section 1459 of Act 2711, known as the Administrative Code of 1917, levied and assessed against petitioner a tax of one per centum (1%) on the sales value of said raw centrifugal sugar. In order to avoid the exaction of penalties under the law, petitioner involuntarily and under protest paid said tax to the respondent, but at the same time filed its written protest against said payment on the ground that said assessments were illegal and that it was exempt therefrom by reason of Section 1460 of the same Act.

THE LAW

The pertinent portions of sections 1459 and 1460 of Act No. 2711, known as the Administrative Code of 1917, relied upon by the parties provide:

> "SEC. 1459. *Percentage tax on merchants' sales.*— All merchants not herein specifically exempted shall pay a tax of one per centum on the gross value in money of the commodities, goods, wares, and merchandise sold, bartered, exchanged, or consigned abroad by them, such tax to be based on the actual selling price or value of the things in question at the time they are disposed of or consigned, whether consisting of raw material or of manufactured or partially manufactured products, and whether of domestic or foreign origin. The tax upon things consigned abroad shall be refunded upon satisfactory

proof of the return thereof to the Philippine Islands unsold.

* * * * * * *

'Merchant', as here used, means a person engaged in the sale, barter, or exchange of personal property of whatever character. Except as specially provided, the term includes manufacturers who sell articles of their own production and commission merchants having establishments of their own for the keeping and disposal of goods of which sales or exchanges are effected, but does not include merchandise brokers."

"SEC. 1460. *Sales not subject to merchants' tax.*— In computing the tax above imposed transactions in the following commodities shall be excluded:

"(a) Things subject to a specific tax.

"(b) *Agricultural products when sold by the producer or owner of the land where grown, or by any other person other than a merchant or commission merchant, whether in their original state, or not.*" (Italics ours.)

MAIN POINT AT ISSUE

The main question to be determined in this case is whether or not, by converting sugar cane owned by sugar cane growers into raw centrifugal sugar and thereafter selling the raw centrifugal sugar received by it as compensation for such service, petitioner becomes a merchant as defined by Section 1459 of Act No. 2711 and therefore subject to the tax therein provided; and, if it were so subject to the tax under Section 1459, whether or not it comes within the exemptions set forth in Section 1460 of the same Act.

GROUNDS FOR ALLOWANCE OF THE WRIT

1. The decision of the Supreme Court of the Philippine Islands in so far as the determination of the legal points involved in the case is concerned did not receive the vote of the required number of Justices as provided by law, because

a. Section 138 of Act No. 2711 (the Administrative Code of 1917), in part provides:

> "Six of the judges of the Supreme Court, lawfully convened, shall be necessary to form a quorum for the transaction of any business involving the admiralty jurisdiction of the court, or for the final disposition of a civil case in which the amount in controversy exceeds ten thousand pesos or a criminal case in which the judgment of the lower court imposed death, or imprisonment for more than ten years, or a fine of more than ten thousand pesos, *and the concurrence of five judges shall be necessary for the pronouncement of a judgment*, but when there is a vacancy in said court five judges shall constitute such quorum, and the concurrence of four shall suffice for the pronouncement of the judgment. In all other cases the presence of four judges shall be sufficient to form a quorum, and the concurrence of three judges for the pronouncement of a judgment." (Italics ours.)

b. The amount involved in this case is more than Ten Thousand Pesos (₱10,000.00).

c. Only four justices concurred in the majority opinion, and the fifth justice who voted for the confirmation of the judgment of the lower Court, did so *pro hac vice*, and for the sole purpose of definitely

disposing of the case in the Supreme Court of the Philippine Islands and in order to permit the defeated party to take this case to the "Supreme Court of the United States and obtain an official decision upon the merits," and in his concurring opinion the said Justice expressly dissented from the legal conclusions upon which the judgment of the Court is based. (Concurring opinion of Mr. Justice Johnson, Record, pp. 62-64).

2. Although the judgment of the Supreme Court of the Philippine Islands is based upon an interpretation of a local statute, by reason of the foregoing, such interpretation is not binding upon this Honorable Court.

3. The amount involved in this controversy exceeds the sum of Twenty-Five Thousand Dollars ($25,000.00), and is therefore within the jurisdiction of this Honorable Court.

4. The decision of the point involved in this case is important to the entire sugar industry of the Philippine Islands in view of the fact that a ruling that the plaintiff-appellant is liable for the tax provided in section 1459 of Act No. 2711, will mean the subjection of all sugar mills to two kinds of internal revenue taxes on one and the same transaction, that is, the tax provided in said section 1459 and that provided in section 1462 of the same act as amended by Act 3082, the pertinent portions of which follow:

"SEC. 1462. *Percentage tax on road, building, irrigation, artesian well, waterworks, and other con-*

struction work contractors, proprietors or operators of dockyards, and others.—Road, building, irrigation, * * *, and other construction work contractors, * * *; proprietors or operators of dockyards, * * *, *sugar centrals*, and rice mills; persons selling light, heat or power; keepers of hotels, restaurants, cafes, or refreshment parlors; and warehousemen, stevedores, dressmakers, * * * shall pay a tax equivalent to one per centum of their gross receipts: * * *."

5. As more fully shown in the brief appended hereto, it is important that the question herein involved be authoritatively and finally adjudged by this Honorable Court upon and after a full presentation to the Court of the merits of said question, in order to prevent future litigation and to promote justice to all concerned.

WHEREFORE, it is respectfully prayed that this petition for a writ of certiorari be granted.

Manila, P. I., June 30th, 1928.

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